



July 31, 2000

Ms. Lisa Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2000-2879

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137532.

The City of Corpus Christi (the “city”) received a request for copies of “any and all applications filed by [a named employee] from 1991 to present, as well as a complete copy of all records connected with the applications and employment of [the employee].” You state that you will provide most of the requested information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.111, 552.122, and 552.130 of the Government Code.<sup>1</sup> You have submitted responsive documents for our review, and have labeled the information as exhibits B-D. We have considered the exceptions you claim and reviewed the submitted information.

You contend that personal financial information contained in exhibit B is excepted from required disclosure by Government Code section 552.101. The financial information at issue involves the employee’s elections regarding retirement funds. Section 552.101 of the Government Code protects “information considered to be confidential by law, either

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<sup>1</sup>You assert that the information is excepted from public disclosure pursuant to Government Code section 552.103. However, you have not submitted arguments pertaining to this exception. In accordance with Government Code sections 552.301(e)(1)(A) and 552.302, all discretionary exceptions not briefed are waived.

constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Common law privacy excepts from disclosure private facts about an individual. *Id.* Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In Open Records Decision No. 373 (1983), this office concluded the following:

[A]ll financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Further, the public has no legitimate interest in personal financial information not involving a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 545 (1990). However, prior decisions of this office have found that financial information relating to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *Id.*; Open Records Decision No. 373 (1983). A public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common law right of privacy. *See* Open Records Decision No. 545 (deferred compensation plan). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10 (1992). For example, this office has held that an employee's participation in the Texas Municipal Retirement System or in a group insurance plan funded by the governmental body is not excepted from disclosure under common law privacy. *Id.*; Open Records Decision No. 480 (1987). However, the employee's optional coverages will generally be funded by the employee and not the state. An employee's decision to enroll for optional coverages is a personal financial decision to allocate part of his compensation to optional benefits, and, therefore, the related information is excepted from disclosure by a right of privacy. Additionally, the designation of the retirement beneficiary is protected from disclosure under section 552.101. *See* Open Records Decision No. 600 (1992). We have marked the personal financial information which must be withheld under section 552.101.

The information contained in exhibit B contains a copy of a driver's license. Subsection 552.130(a)(1) of the Government Code excepts from public disclosure information relating to a driver's license issued by an agency of this state. Therefore, you must withhold the copy of the driver's license under section 552.130.

Exhibit B also contains social security numbers. Government Code section 552.117(1) excepts from disclosure the home addresses, telephone numbers, social security numbers, and family information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 allows you to withhold this information if the official or employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the individual made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The remaining social security numbers are confidential if they were obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii); Open Records Decision No. 622 (1994). We have marked the social security numbers which may be require redaction prior to the release of the remaining information.

You contend that the information contained in exhibit C is excepted from disclosure pursuant to Government Code subsection 552.122(b). This exhibit contains interview questions for the Electrical Inspector I position, the interviewer's notations regarding the applicant's responses given during the interview, a copy of the electrical inspector position exam, and the applicant's answers to the exam questions.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

We find that only one question of the interview questions, question 2-3, tests the applicant's knowledge or ability in a particular area; therefore, question 2-3 may be withheld under section 552.122. The exam questions, along with their corresponding possible answers, may also be withheld under 552.122 as information which tests the applicant's knowledge or ability in a particular area. The remainder of the interview questions, as well as the answers to all of the interview questions, do not concern the applicant's knowledge or ability in a

particular area, and therefore must be released. We have marked the information that the city may withhold under section 552.122. The remainder of the submitted information must be released to the requestor.

You contend that exhibit D is excepted from public disclosure pursuant to Government Code section 552.111 as an internal communication consisting of recommendations reflecting policy making processes. This exhibit consists of a memorandum from the Director of Housing and Community Development to the Assistant City Manager. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters because disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. See Open Records Decision No. 615 at 5 (1993). Additionally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. See *id.*

After reviewing the submitted document, we conclude that the information does not relate to the city's policymaking functions. The document not only contains many factual assertions, but it also specifically pertains to administrative or personnel matters. herefore, you may not withhold the document under section 552.111. Thus, as you have raised no other exceptions to the disclosure of this document, it must be released to the requestor.

In summary, some of the information contained in exhibit B is excepted from public disclosure: certain personal financial information must be withheld based on section 552.101; the copy of the driver's license must be withheld pursuant to section 552.130; and the social security numbers must be redacted if they were obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990, or if an employee requested that this information be kept confidential under section 552.024 prior to the date of the request for information. Question 2-3 of the interview questions and all of the exam questions and answers may be withheld under section 552.122. Exhibit D is not excepted from disclosure and must be released. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

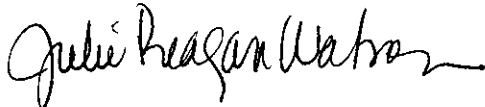
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID# 137532

Encl. Submitted documents

cc: Mr. Frank L. Carraba  
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(w/o enclosures)